

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Giovanni Moss, Director, Housing and Community Development,
954-797-1226

PREPARED BY: Burton Spiwak, Programs Specialist, Housing and Community
Development

SUBJECT: Resolution

AFFECTED DISTRICT: Town Wide

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: EXPENDITURE - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF DAVIE AND BROWARD COUNTY FOR THE EXPENDITURE OF 2007/08 AND 2008/09 HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS IN THE TOTAL AMOUNT OF \$110,107 TO PROVIDE FOR CLOSING COSTS AND DOWN PAYMENT ASSISTANCE FOR FIRST-TIME HOMEBUYERS.

REPORT IN BRIEF: The Town of Davie and 10 other entitlement jurisdictions formed a Consortium for implementation of the Federal Home Investment Partnership Program (HOME) with Broward County in 2003. As a partner in this Consortium, the Town receives a yearly allocation of HOME funds from HUD to be utilized for affordable housing programs which the Town determines best meets its needs. The Housing and Community Development Department determined that it will be beneficial to all parties and will fill a need in the community and will result in great benefit to the residents of the Town to provide assistance to "First-Time Homebuyers" under a Purchase Assistance Program. Priority will be given to Davie renters, mobile home occupants, and Town employees. In order for the Town to access its HOME funds in the total amount of \$110,107, a Memorandum of Understanding (MOU) between the Town and Broward County must be executed.

PREVIOUS ACTIONS: Davie joined county-wide HOME Program Consortium in 2002 by Resolution No. 2002-145, approved on June 19, 2002.

FISCAL IMPACT: Yes

Has request been budgeted? n/a

If yes, expected cost: \$110,107 in Federal HOME funds will be applied to the “First-Time Homebuyer’s” Program.

RECOMMENDATION(S): Motion to approve resolution authorizing Mayor to execute Memorandum of Understanding (MOU) between the Town of Davie and Broward County.

Attachment(s): Resolution, Memorandum of Understanding (MOU)

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF DAVIE AND BROWARD COUNTY FOR THE EXPENDITURE OF 2007/08 AND 2008/09 HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS IN THE TOTAL AMOUNT OF \$110,107 TO PROVIDE FOR CLOSING COSTS AND DOWN PAYMENT ASSISTANCE FOR FIRST-TIME HOMEBUYERS.

WHEREAS, the Town of Davie is in a partnership with Broward County; and

WHEREAS, the Town receives a yearly allocation of HOME funds to be utilized in a program which the Town determines; and

WHEREAS, the Town's allocation for the HOME Program Years of 2007/08 and 2008/09 combined is \$360,107; and

WHEREAS, the Town desires to utilize a portion of the 2007/08 and 2008/09 HOME funds allocation to provide for closing costs and down payment assistance for "First-Time Homebuyers" whose incomes are at or below the 80% of AMI level; and

WHEREAS, prior to the expenditure of the HOME funds in the total amount of \$110,107 a Memorandum of Understanding between the Town and Broward County must be executed; and

WHEREAS, the Town of Davie believes that such an arrangement will be beneficial to all parties and will fill a need in the community and will result in great benefit to the residents of the Town of Davie; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Mayor or his designee is hereby authorized to execute the Memorandum of Understanding between the Town of Davie and Broward County for the expenditure of 2007/08 and 2008/09 HOME Investment Partnership Program (HOME) funds in the total amount of \$110,107 to provide assistance to “First-Time Homebuyer’s” with income at or below 80% of the AMI under Davie’s Purchase Assistance Program.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2009

MEMORANDUM OF UNDERSTANDING

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

ADMINISTRATION OF HOME FUNDING PROGRAM

FISCAL YEARS 2007-08 AND 2008-09
MEMORANDUM OF UNDERSTANDING

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

ADMINISTRATION OF HOME FUNDING PROGRAM

FISCAL YEARS 2007-08 AND 2008-09

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("COUNTY"), and TOWN OF DAVIE, FLORIDA, a municipal corporation of the State of Florida ("TOWN"), collectively referred to as the "Parties."

WHEREAS, the Parties enter into this MOU pursuant to Section 163.01, Florida Statutes, also known as the Florida Interlocal Cooperation Act of 1969; and

WHEREAS, COUNTY and TOWN are members of the Broward County HOME Consortium ("Consortium"), and are subject to the terms and conditions of that certain HOME Investment Partnership Program Consortium Cooperation Agreement ("HOME Agreement") entered into on June 25, 2002; said HOME Agreement is incorporated herein by reference; and

WHEREAS, COUNTY, in its representative capacity to the Department of Housing and Urban Development ("HUD") for all members of the Consortium, is the recipient of HOME funds from HUD, and has allocated these funds to various municipalities within Broward County, including TOWN; and

WHEREAS, TOWN is desirous of procuring the services of COUNTY to administer a portion of its allocation of HOME funding pursuant to federal and local laws and regulations; NOW, THEREFORE,

IN CONSIDERATION of the mutual covenants set forth, the Parties agree as follows:

1. Funding. COUNTY shall allocate One Hundred Ten Thousand One Hundred and Seven (\$110,107.00) Dollars in HOME funding to TOWN from the 2007-2008 and 2008-2009 Fiscal Years for activities under this MOU. COUNTY agrees to administer TOWN's allocation of HOME funds for the HOME Program described in Exhibits "A" and "B," attached hereto and incorporated herein this MOU.
2. It is specifically understood and agreed by the Parties that all rights and powers as may be vested in TOWN pursuant to Chapter 166, Florida Statutes, or any other law, ordinance or regulation of TOWN not specifically addressed in this MOU shall be retained by TOWN.
3. Administration. COUNTY shall administer and assume overall responsibility for ensuring that the HOME Program referenced in this MOU and Exhibits "A" and "B" are carried out in compliance with the requirements of 24 CFR Part 92, incorporated herein by reference.

4. Term. This MOU shall become effective upon execution by COUNTY and shall continue until one year after execution, unless terminated earlier as provided for herein.
5. Termination. This MOU may be terminated by either party upon thirty (30) days written notice to the other party in accordance with the Notice provision set forth in paragraph 10(B) herein. If TOWN elects to terminate this MOU, or otherwise terminate or cease its membership in the Consortium and does not become a HOME Participating Jurisdiction, TOWN shall not be entitled to a refund or return of any unused portion of TOWN's HOME fund allocation referenced above, nor any program income or recapture monies derived from any projects by TOWN pursuant to this Agreement. For the purposes of this MOU, "program income" shall be as defined in 24 CFR Part 92.2.
6. Should TOWN withdraw from the Consortium and become a HOME Participating Jurisdiction, COUNTY shall transfer to TOWN, at TOWN's request and following HUD approval, any program income, recapture monies and any unused portion of TOWN's HOME fund allocation for the particular project referenced herein this MOU. In this event and upon the transfer of such HOME funds to TOWN, TOWN shall assume all obligations and responsibilities attributable to such HOME funds.
7. Amendment. No modification, amendment, or alteration in the terms or conditions shall be effective unless contained in a written document prepared with the same or similar formality as this MOU and executed by the Parties, as provided for herein. Such amendment shall be subject to approval of the Board of County Commissioners, except the County Administrator shall be authorized to execute amendments that change the term of the MOU or that change the Project, so long as the Project consists of eligible activities under 24 CFR Part 92.

8. Liability. The Parties are state agencies or political subdivisions of the state of Florida and each agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this MOU or any other contract. Additionally, the Parties shall each individually defend any action or proceeding brought against their respective agency and shall be individually responsible for all its own costs, attorneys fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof; except such claims, demands, suits, actions, damages and causes of action caused by negligent acts or omissions of a party, its officers, agents, servants, and employees.
9. Insurance. The Parties shall each individually maintain throughout the term of this MOU any and all applicable insurance required by Florida law for governmental entities and each shall furnish to the other party written verification of such insurance upon request of the party.
10. Miscellaneous:
 - A. Third Party Beneficiary. Neither TOWN nor COUNTY intends to directly or substantially benefit a third party by this MOU. Therefore, the Parties agree that there are no third party beneficiaries to this MOU and that no third party shall be entitled to assert a claim against either of them based upon this MOU. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this MOU.
 - B. Notice. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

COUNTY: Director
Broward County Housing Finance and
Community Development Division

110 NE 3rd Street
Fort Lauderdale, Florida 33301

TOWN: Town of Davie
Director of Housing and Community Development
4700 Southwest 64th Avenue, Suite D
Davie, Florida 33314

- C. Assignment. Neither this MOU nor any interest herein shall be assigned, transferred, or encumbered by either party, except COUNTY may subcontract services to complete the work related to COUNTY's the administration of the HOME funds referenced in this MOU and Exhibit "A."
- D. Materiality. The Parties agree that each requirement, duty, and obligation set forth in this MOU is substantial and important to its formation and, therefore, is a material term.
- E. Waiver. The failure of the Parties to enforce any provision of this MOU shall not be deemed a waiver of such provision or modification of this MOU. A waiver of any breach of a provision of this MOU shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this MOU.
- F. Severability. In the event a portion of this MOU is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless a party elects to terminate this MOU. An election to terminate this MOU based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- G. Joint Preparation. The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this MOU has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
- H. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached, any document or events referred to, or any document incorporated into this MOU by reference and a term, statement, requirement, or provision of this MOU, the term, statement, requirement, or provision contained in paragraphs 1 through 10 of this MOU shall prevail and be given effect.

- I. Governing Law and Venue. This MOU shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this MOU and any action involving the enforcement or interpretation of any rights under this MOU shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, and shall be governed by the laws of the state of Florida. To encourage prompt and equitable resolution of any litigation that may arise, each party waives any rights it may have to a trial by jury of any such litigation related to or arising out of this MOU.
- J. Merger. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this MOU that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions shall be effective unless set forth in writing in accordance with this MOU.
- K. Independent Contractors. TOWN is an independent contractor under this MOU. Services provided by TOWN pursuant to this MOU shall be subject to the supervision of TOWN. In providing such services, neither TOWN nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to TOWN or TOWN's agents any authority of any kind to bind COUNTY in any respect whatsoever.
- L. Incorporation by Reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties and incorporated herein as if set forth in full hereunder. The attached Exhibit(s) "A" and "B" are incorporated into and made a part of this MOU.
- M. Multiple Originals. This MOU may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.
- N. Survival. Any rights either party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such

termination. Any provision of this Agreement which contains a restriction or requirement by which extends beyond the date of termination set forth herein shall survive termination of this Agreement and be enforceable.

IN WITNESS WHEREOF, the parties hereto have made and executed this
MOU: BROWARD COUNTY through its BOARD OF COUNTY
COMMISSIONERS, signing by and through its County Administrator, authorized
to execute same by Board action on May 8, 2007 and May 13, 2008 and TOWN
OF DAVIE, signing by and through its Mayor, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through
its COUNTY ADMINISTRATOR

Signature

Bertha Henry

Print Name

____ day of _____,

20__.

Insurance requirements
approved by Broward County's
Attorney
Risk Management Division

Approved as to form by
JEFFREY J. NEWTON, County

for Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____

By _____

A. Denise Sagerholm (Date)
Assistant County Attorney

MEMORANDUM OF UNDERSTANDING BETWEEN BROWARD COUNTY AND
TOWN OF DAVIE, FLORIDA, FOR ADMINISTRATION OF HOME FUNDING
PROGRAM

TOWN

TOWN OF DAVIE

ATTEST:

By:

Mayor

Town Clerk

Print/Type Name

____ day of _____,

20____.

Approved as to form:

Town Attorney

EXHIBIT A

PROJECT DESCRIPTION

Fiscal Years 2007-08 and 2008-09

Project Name: Town of Davie HOME-Funded Purchase Assistance Program

Project Description:

The Town of Davie will utilize both the FY 2005/06 and 2006/07 HOME funds in the total amount of \$374,106 to assist income-eligible persons who earn 80% or less of the median income, with a deferred-loan in the amount of \$40,000 toward the purchase of a home.

A lien will be placed on the unit for ten (10) years for newly constructed and existing structures. New construction shall require a full payback of the deferred loan for the first five (5) years, with the second five (5) years amortized at 20% per year. For existing structures and for new construction units (in years 5–10), each year that the unit is not sold or rented, and is maintained in good condition, the lien will be amortized down so it is free and clear after the 10 year period.

Single family homes, condominium units, townhouses, villas etc., that are fee-simple title, are eligible for purchase.

Broward County will administer the Purchase Assistance Program according to the HOME Purchase Assistance Program Policies and Procedures, and shall certify each applicant or household for income-eligibility.

EXHIBIT B
COSTS/BUDGET FOR PROJECT

Fiscal Years 2007-08 and 2008-09

Funding Sources					
Category	(1)	HOME	(2)	(3)	Total
A Construction					
B. Inspections					
C. Developer fee					
D. Direct client subsidy	\$110,107*				
E. Contractual Services					
F. Appraisal					
G. Other Closing Costs					
H. Totals	\$110,107*				

***FY 2007/08 \$58,409**

FY 2008/09 \$51,698

EXHIBIT B
(Continued)

BUDGET NARRATIVE
Fiscal Years 2007-08 and 2008-09

The Town of Davie will utilize a portion of both the FY 2007/08 and 2008/09 HOME funds in the total amount of \$110,107 to assist income-eligible persons who earn 80% or less of the area median income, with a deferred-loan in the amount of \$36,702 toward the purchase of a home. This will yield three (3) units.

Each homebuyer will be required to obtain first mortgage financing in a minimum amount of approximately 65% of the property sales price.

Each homebuyer will be required to contribute approximately 3% of the property sales price as an "out of pocket" contribution towards home inspections, appraisals, and other closing costs.